



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Spandex USA

**File:** B-243629

**Date:** April 23, 1991

Charles J. Kelly, Jr., for the protester.  
Christine F. Bednarz, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

### DIGEST

Agency properly rejected a late proposal for a Federal Supply Schedule contract where a commercial carrier caused the late delivery.

### DECISION

Spandex USA protests the rejection of its offer by the General Services Administration (GSA) under Solicitation No. 7FXG-23-89-9912-B for a Federal Supply Schedule (FSS) contract for signs and display systems. GSA rejected Spandex's offer because it was received after the time set for receipt of offers.

We dismiss the protest.

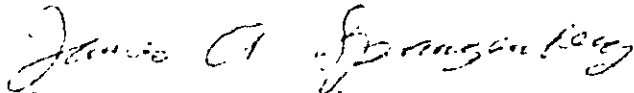
The solicitation required offers to be received by 4:15 p.m., March 28, 1991. The solicitation included Federal Acquisition Regulation (FAR) § 52.215-10, which provides that an agency generally will not consider proposals received after the exact time specified for receipt. Spandex sent its offer on March 27 through Federal Express, which guaranteed delivery by 10:30 a.m., March 28. Federal Express missorted the package and failed to deliver the offer on March 28, as promised. GSA received the offer on March 29 and rejected it as untimely.

As a general rule, offerors bear responsibility for delivering their offers to the proper place at the proper time. Remstar Int'l Inc., B-242680, Jan. 23, 1991, 91-1 CPD ¶ 65. This same rule applies to late proposals on solicitations for FSS contracts, where the solicitation includes the late proposal clause. Id.; see Clyde Digital Sys., Inc., B-222618, July 18, 1986, 86-2 CPD ¶ 83. An agency may consider a late offer, hand-carried by a commercial carrier, only if the sole or paramount reason for the late

receipt was due to government mishandling after timely receipt in the place designated for receipt of proposals. Weather Data Servs., Inc., B-238970, June 22, 1990, 90-1 CPD ¶ 582. An agency may not consider a late offer if the offeror's failure to insure timely delivery to the designated location caused the late receipt. Id.

In the present case, Spandex admits that Federal Express was solely responsible for the late proposal. This fact precludes the agency from considering the late proposal, a legal conclusion which Spandex apparently concedes. Although Spandex suggests that the FAR should be amended to allow agencies to consider late proposals caused by a commercial carrier, our Office lacks jurisdiction to amend the FAR.

The protest is dismissed.

  
James A. Spangenberg  
Assistant General Counsel